



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of)	MAIL STOP AMENDMENT
)	
Darko PERVAN)	Group Art Unit: 3637
)	
Application No.: 09/714,514)	Examiner: Phi Dieu Tran A
)	
Filed: November 17, 2000)	Confirmation No.: 5020
)	
For: LOCKING SYSTEM AND)	
FLOORING BOARD)	

PRE-APPEAL CONFERENCE REQUEST

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

A Pre-Appeal Conference is requested to review the above-identified application. No amendments are being filed with this request. For at least the following reasons, the outstanding rejections are clearly improper and without basis.

OVERVIEW

In rejecting claims 1-14 and 16-34 in the Official Action dated July 13, 2005, the Examiner relies on a combination of U.S. Patent No. 6,006,486 to Moriau et al. (hereafter "*Moriau et al.*") in view of U.S. Patent No. 5,349,796 to Meyerson (hereafter "*Meyerson*") and U.S. Patent No. 4,426,820 to Terbrack et al. (hereafter "*Terbrack et al.*"). The combination of *Moriau et al.* in view of *Meyerson* and *Terbrack et al.* and further in view of U.S. Patent No. 2,398,632 to Frost et al. (hereafter "*Frost et al.*") is proposed by the Examiner in rejecting claim 15.

ARGUMENTS

1. There is no motivation to combine *Moriau et al.* with *Meyerson* because they are non-analogous

Moriau et al. is directed to floor panels for floor covering (see Abstract). The floor panels are formed of ground and bound unitary composite material, such as High Density Fibreboard (HDF) and medium Density Fibreboard (MDF) (see col. 3, lines 26-37) because these materials show "ideal features in order to realize a connection, such as mentioned above, as these materials show the right features in respect to elastic deformation . . . whereby it is avoided that the floor panels come unlocked or are damaged in an irreparable manner" (see, col. 3, lines 53-61). Further, the connections are of such manner that they can be disassembled without being damaged (see, col. 4, lines 1-2).

Meyerson is directed to a building panel for use in roofs or walls (see col. 2, lines 16-18 and col. 3, lines 43-44). The building panel has a core formed of insulating material, such as expanded polystyrene or equivalent (col. 1, lines 57-58). The building panels are stapled, nailed or glued together (col. 3, lines 63-68).

Therefore, a skilled person would not have looked toward *Meyerson* (related to permanently joined, insulative expanded polystyrene or equivalent for roofs and walls) for direction for modifying *Moriau et al.*'s fibreboard core flooring. There is no indication in either *Moriau et al.* or *Meyerson* that the features that connect insulative material in roofs or walls would be applicable to *Moriau et al.*'s floors. There is no disclosure in *Meyerson* that the connector for insulative material in roofs or walls is capable of acting, or designed to act, in the manner as claimed, e.g., as floorboards.

Further, *Moriau et al.* is directed to a floor panel with a locking system formed by machining in a HDF core and *Meyerson* is directed to wall and roof panels with a core material, in which it is not possible form a locking system by machining/milling.

For at least these reasons, it would not have been obvious to a skilled person to modify the fibreboard core flooring in *Moriau et al.* to include the suggested features of the connector for insulative material in roofs or walls as shown in *Meyerson*, at least because one would expect the insulative material of *Meyerson* to not meet the "ideal features" of the fibreboard materials of *Moriau et al.*

2. *Moriau et al.* teaches away from the proposed modification identified by *Meyerson*

Meyerson is cited for the proposition that *Moriau et al.* would have been modified by one of ordinary skill to include the identified space in *Meyerson*. This proposed modification is traversed because *Moriau et al.* itself teaches away from such a modification. Thus, there is no motivation for the proposed modification.

In *Moriau et al.*, embodiments of the locking system consist of a projecting portion supporting a locking element, which to join by angling have lower abutment surfaces with a bent round shape. Further more *Moriau et al.* teaches (col. 12, lines 28-39) a tight, wedge-like, fit between the tongue and groove, due to the curvature of the tongue and groove "even if the insertion depth of the tongue and the groove should vary" (col. 12, lines 36-37). This type of connector in *Moriau et al.* teaches away from a modification to place a space under the tongue as proposed by the Examiner.

For at least this reason, one of ordinary skill seeking to modify *Moriau et al.* would not have included the space of *Meyerson* because such a space is inapposite to the type of connection in *Moriau et al.*

Further, the Examiner's argument relying on the opening above the edge 29 and between parts 11 and 12 is not clear. Reference numeral 29 actually refers to a sliding

cleat (a separate part). *Meyerson* doesn't show a lower abutment surface, extending in a second plane essentially parallel to the principal plane, between the tongue and the groove, because the part of the tongue, which is parallel to the principal plane abuts the cleat 29.

3. Even if properly combined, *Moriau et al.* in view of *Meyerson* and *Terbrack* does not show the features of at least claims 2-3

As previously discussed at point 2, there is no motivation to modify *Moriau et al.* by the identified space in *Meyerson*. However, even if modified, the space in *Meyerson* would not have led one of ordinary skill to form a space in *Moriau et al.* that is "all the way from the inner vertical plane to the outer vertical plane" (claims 2 and 3). That is because the space identified by the Examiner in *Meyerson* is itself not all the way from the inner vertical plane to the outer vertical plane and is, at best, only partially formed over that extent. Thus, even if modified as proposed, the resulting space would not have met this claim feature and a prima facie case of obviousness has not been established. See §MPEP 2143.01.

4. Some of the Examiner-identified features in *Moriau et al.* relied upon in the rejection are incorrectly described and do not meet the claim features

The Examiner alleges that locking groove 10 is formed in the underside of a first one of the floorboards (page 2 of the Official Action). This is incorrect in that feature 10 in *Moriau et al.* is formed horizontally into a core of the floor board from an edge. Feature 10 is commonly referred to as a groove (col. 5, lines 49), which is relied upon earlier in the rejection for a different feature of the claim.

The Examiner alleges that locking element 9 is positioned on a projecting portion from a second one of the floorboards and is at a distance from the joint edge (page 2 of the Official Action). This is incorrect in that feature 9 in *Moriau et al.* is itself the projecting portion and no separate feature is present to be the locking element

"positioned on the projecting portion." Feature 9 is commonly referred to as a tongue (col. 5, lines 49), which is relied upon earlier in the rejection for a different feature of the claim.

Finally, the claimed locking groove and cooperating locking element provide horizontal locking (see claim 1). However, the Examiner-identified locking groove 10 and locking element 9 provide no such feature since nothing in Examiner-identified locking groove 10 and locking element 9 prevents horizontal separation of the two floorboards in *Moriau et al.*

Based on the above, it is respectfully noted that the rejection as presented is deficient because at least these features of the claim are not identified by the Examiner and therefore obviousness has not been established. See §MPEP 2143.01.

CONCLUSION

For at least the reasons stated above, the Examiner has not established a *prima facie* case of obviousness and the outstanding rejections should be withdrawn.

Respectfully submitted,

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Date: October 13, 2005

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